



Section of Environment,
Energy, and Resources

KEY ENFORCEMENT AND REGULATORY DEVELOPMENTS IN U.S. EPA REGION 8

November 5-6, 2009 | Hyatt Regency at the Convention Center | Denver, CO



About the Program

The ABA Section of Environment, Energy, and Resources (SEER) is pleased to offer this timely conference on environmental enforcement and regulatory developments in the U.S. EPA Region 8 states of Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, and 27 Tribal Nations. This program focuses on developments of particular concern in these western states and across this EPA Region, and is unique in its substantial EPA Region 8, EPA Headquarters, and State environmental enforcement managers' participation on the program faculty.

This program is accented by a plenary session among senior state environmental enforcement managers and a Keynote address by the Assistant Regional Administrator of U.S. EPA Region 8's Office of Enforcement, Compliance, and Environmental Justice.

The program is a collaboration of ABA SEER's State and Regional Environmental Coordination Committee, Environmental Enforcement and Crimes Committee, Native American Resources Committee, the Colorado Bar Association's Environmental Law Section, and U.S. EPA Region 8.

Who Should Attend

- Lawyers who practice environmental law in Region 8, including private practitioners, in-house counsel, counsel for nonprofit environmental groups, and lawyers for local, state, and federal governmental agencies.
- Anyone wishing to learn more about emerging environmental law issues in Region 8.

Program Schedule

THURSDAY, NOVEMBER 5, 2009

3:00 p.m. – 6:30 p.m.

Registration

4:00 p.m. – 5:00 p.m.

Tour of U.S. EPA Region 8 Offices

Region 8 Headquarters, located at 1595 Wynkoop Street, achieved the gold rating under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) program. To achieve this designation, the building was designed and constructed in a more environmentally friendly way than a traditional building. Some building features that help EPA decrease its environmental impact include:

- Extensive use of daylight to reduce the need for artificial light;
- A vegetated green roof to control storm water and decrease urban heat island effects;
- Waterless urinals and low-flow plumbing fixtures to decrease water use; and
- High recycled content materials throughout the building help preserve resources.

Attendees of the program can take a free tour of EPA Region 8's new office building prior to the welcome reception if they schedule to do so in advance (required for building security reasons). EPA offices are a short walk or a free shuttle ride from the Hyatt Regency.

5:30 p.m. – 6:30 p.m.

Welcome Reception at the Hyatt Regency Denver at the Convention Center

FRIDAY, NOVEMBER 6, 2009

7:00 a.m. – 8:00 a.m.

Continental Breakfast

8:00 a.m. – 8:05 a.m.

Welcome and Opening Remarks

John R. Jacus, Program Co-Chair, Davis Graham & Stubbs LLP, Denver, CO

W. Robert Ward, Regional Counsel, Office of Regional Counsel, U.S. EPA Region 8, Denver, CO

8:05 a.m. – 9:30 a.m.

The States Speak: Senior Environmental Enforcement Managers from Region 8 States Discuss Environmental Enforcement Priorities and "Hot Topics" in their states

The states in U.S. EPA Region 8 continue to face cutting edge enforcement issues, including energy development and water quality, in an era of challenging budget constraints. These managers will discuss their enforcement initiatives and priorities, their interactions with EPA, and future challenges.

MODERATOR

Michael T. Risner, Director, Legal Enforcement Program, U.S. EPA Region 8, Denver, CO

SPEAKERS

John Arrigo, Administrator, Enforcement Division, Montana Department of Environmental Quality, Helena, MT

John V. Corra, Director, Wyoming Department of Environmental Quality, Cheyenne, WY

Dave Glatt, Chief, Environmental Health Section, North Dakota Department of Health, Bismarck, ND

Martha E. Rudolph, Director, Environmental Programs, Colorado Department of Public Health and Environment, Denver, CO

Amanda Smith, Executive Director, Utah Department of Environmental Quality, Salt Lake City, UT

9:30 a.m. - 10:00 a.m.

Networking Break

Concurrent Breakouts

10:00 a.m. - 11:00 a.m.

RCRA & CERCLA Update

This program will provide an update on CERCLA and RCRA developments, including enforcement priorities for clean up. It will address developments regarding financial assurance, electronic waste, coal ash, and hazardous secondary materials destined for recycling, among other things. It will also cover the U.S. Supreme Court's *Burlington Northern* opinion and other noteworthy CERCLA opinions.

MODERATOR

Charlotte L. Neitzel, Holme Roberts & Owen LLP, Denver, CO

SPEAKERS

Charles L. Figur, Senior Enforcement Attorney, Legal Enforcement Program, U.S. EPA Region 8, Denver, CO

Bruce Kulpan, Office of Site Remediation Enforcement, Office of Enforcement and Compliance Assurance, U.S. EPA, Washington DC

10:00 a.m. - 11:00 a.m.

The Many Implications of GHG Reporting and Regulation

In the aftermath of *Massachusetts v. EPA*, we have seen many developments related to reporting and regulation of greenhouse gases (GHGs) in the U.S. This session will cover the final EPA mandatory GHG reporting rule, EPA's timeline for a GHG endangerment finding, which would declare carbon dioxide and other greenhouse gases as pollutants that threaten public health and welfare, the implications for any such endangerment finding, and the status of Congressional bills that would limit GHG emissions, most likely through a "cap and trade" program. Mr. Moore will also discuss his ongoing work on the development of a GHG reporting protocol for onshore oil and gas production facilities, a topic and sector of significant regional interest.

MODERATOR

John R. Jacus, Davis Graham & Stubbs LLP, Denver, CO

SPEAKERS

Carol Holmes, Office of General Counsel, U.S. EPA, Washington, DC

Zane M. Kessler, State Liaison for Environmental Affairs, Staff to U.S. Senator Michael Bennet, Denver, CO

Tom Moore, Air Quality Program Manager, Western Governors' Association, Ft. Collins, CO

Concurrent Breakouts

11:00 a.m. - 12:00 p.m.

Clean Air Act Update

This panel will review the Clean Air Act enforcement developments in Region 8 states, including recent consent decrees entered with the U.S., as well as the significant regulatory challenges that lie ahead for EPA and the states regarding ozone attainment, reasonable progress on reducing Regional Haze, and related issues.

MODERATORS

E. Blaine Rawson, Holme Roberts & Owen, LLP, Salt Lake City, UT

Mary A. Throne, The Throne Law Office, Cheyenne, WY

SPEAKERS

Pamela Mazakas, Acting Director, Air Enforcement Division, Office of Enforcement and Compliance Assurance, U.S. EPA, Washington, DC

Jonah Staller, Assistant Regional Counsel, Office of Regional Counsel, U.S. EPA Region 8, Denver, CO
Nancy E. Vehr, Senior Assistant Attorney General, Water & Natural Resources Division, State of Wyoming, Cheyenne, WY

11:00 a.m. - 12:00 p.m.

Environmental Audit and Voluntary Disclosure Update: Federal and State Policies

In anticipation of heightened federal and state enforcement initiatives, voluntary disclosures under EPA's Audit Policy and state counterparts may take on a larger role for industry in the coming years. Ms. O'Keefe will discuss the results of and challenges for EPA's Audit Policy, and talk about new directions for the Policy. These efforts include the "Interim Approach to Applying the Audit Policy to New Owners," which is designed to encourage new owners to audit their recently acquired facilities and self-disclose and correct violations they find; and "eDisclosure," EPA's electronic reporting pilot program, which streamlines the reporting of EPCRA violations. Facility operators may also be looking towards developing or enhancing Environmental Management Systems (EMSs) in order to provide greater opportunities for proactive environmental oversight, and to mitigate their exposure to potential enforcement liability. Mr. Woellner will discuss the nuts and bolts of a structured environmental self-audit, as well as the ingredients for an effective EMS, and Ms. Cooper will provide perspectives from her state agency and industry experience.

MODERATOR / SPEAKER

Jill E. Cooper, Group Lead Environment, USA Division, EnCana USA, Denver, CO

SPEAKERS

Susan O'Keefe, Associate Director, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance, U.S. EPA, Washington DC
Robert A. Woellner, President, QUEST Management International, LLC, Denver, CO

12:00 p.m. - 12:30 p.m.

Lunch

12:30 p.m. - 1:30 p.m.

Keynote Address: Mike Gaydosh will discuss overall Region 8 environmental priorities and specifically, national and regional enforcement priorities in a multi-media program with some surprise content.

SPEAKER

Andrew Michael Gaydosh, Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. EPA Region 8, Denver, CO

Concurrent Breakouts

1:30 p.m. - 2:30 p.m.

Tribal Environmental Policy Developments

EPA Region 8 includes 27 federally recognized tribes on 26 Indian reservations, which comprise more than 22.8 million acres of land (an area approximately the size of Indiana), and these tribes represent over 207,000 enrolled members (not including members living on fee land). Region 8's various Tribal programs were created to promote the direct government-to-government relationship that is the basis of EPA's 1984 Indian Policy, and for overall management and accountability of the Regional Indian Program. This panel will review EPA Region 8 efforts to ensure the protection of human health and the environment in cooperation and collaboration with these Indian tribes, among other things.

MODERATOR

Michael Boydston, Associate Regional Counsel, Office of Regional Counsel, U.S. EPA Region 8, Denver, CO

SPEAKERS

Daniel F. Decker, Decker & Desjarlais Attorneys-at-Law, PLLC, St. Ignatius, MT
Robert Gruenig, Senior Policy Analyst, National Tribal Environmental Council, Albuquerque, NM
Amy Swanson, Senior Enforcement Attorney, Legal Enforcement Program, U.S. EPA Region 8, Denver, CO

1:30 p.m. - 2:30 p.m.

Clean Water Act Update

This panel will review recent developments in Clean Water Act permitting, compliance, and enforcement. The panelists' discussion will address recent judicial and legislative developments affecting the reach of the Clean Water Act, including the U.S. Supreme Court's 2006 decision in *Rapanos/Carabell v. United States*, and legislative efforts to restore a broader pre-SWANCC definition of "waters of the United States." The panel will also provide an update on stormwater permitting and enforcement, including a brief review of recent court cases, including the Ninth Circuit's two decisions in late 2008 ("*NRDC v. EPA*" in both cases) vacating the rule exempting oil and gas construction activities from stormwater permitting requirements and requiring EPA to develop effluent limitations guidelines and new source performance standards for the construction industry; a review of the regulatory and permitting response to these decisions; and a summary of significant recent enforcement actions, settlements, and permitting developments. The panel will also address the case of *Coeur Alaska v. Southeast Conservation Council*, a 2009 decision of the U.S. Supreme Court which held that pollutants that have the effect of changing the bottom elevation of a body of water may be regulated as "fill material" under Section 404 of the Clean Water Act instead of as "pollutant discharges" subject to new source performance standards under Section 402's NPDES permit program.

MODERATOR

Adam S. Cohen, Davis Graham & Stubbs LLP, Denver, CO

SPEAKERS

Donna Downing, Clean Water Act Jurisdiction Team Leader, U.S. EPA, Washington, DC (via video teleconference)

Margaret J. "Peggy" Livingston, Senior Enforcement Attorney, Legal Enforcement Program, U.S. EPA Region 8, Denver, CO

Professor Amy Wildermuth, University of Utah School of Law, Salt Lake City, UT

2:30 p.m. - 2:45 p.m.

Networking Break

2:45 p.m. - 4:00 p.m.

Recent Criminal Environmental Trials in U.S. EPA Region 8: A Round Table Discussion

Discussion will focus on two recent criminal environmental trials in Region 8, *U.S. v. W.R. Grace, et al.* and *U.S. v Lopez*. In each case, prosecutors and defense counsel were faced with significant intent issues that ultimately became the subject of appellate court decisions. The panel will focus on how intent issues were handled at the trial court level and the results of the appellate court decisions. In addition, the panelists will discuss the testimony of experts and agency enforcement personnel and *Daubert* type challenges of expert witnesses that can be expected. The panelists will also focus on pre-trial motions practice and other evidentiary issues that arose during these trials.

MODERATOR

Walter D. James III, Walter D. James III, PLLC, Grapevine, TX

SPEAKERS

Patricia Davies, Assistant U.S. Attorney, U.S. Attorney's Office, Denver, CO

Virginia Grady, U.S. Public Defender's Office, Denver, CO
Andrew King-Reis, University of Montana School of Law, Missoula, MT

David Krakoff, Mayer Brown LLP, Washington, DC
Kris McLean (invited), Assistant U.S. Attorney, U.S. Attorney's Office, Missoula, MT

4:00 p.m. - 5:00 p.m.

Privileged or Not: What Would You Do If the Subpoena Asked for YOUR Documents?

This session will review the rules of attorney-client privilege, work product immunity and disclosure as applied to common environmental documents and real-life situations, including those involving:

- Environmental Consultants
- In-house Industry Counsel
- Outside Industry Counsel
- Environmental Investigations
- Environmental Audits
- EPA and Government Files

The speakers will also review applicable ABA Model Rules of Professional Responsibility, electronic discovery issues and EPA/ DOJ policies regarding claims of privilege, among other things.

MODERATOR / SPEAKER

James T. Price, Spencer Fane Britt & Browne LLP, Kansas City, MO

SPEAKERS

Lauren C. Buehler, Assistant General Counsel, Xcel Energy, Denver, CO

Alan Greenberg, U.S. Department of Justice, Denver, CO

Program Planning Committee

CO-CHAIRS

John J. Jacus, Davis Graham & Stubbs LLP, Denver, CO

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Connie Rogers, Davis Graham & Stubbs LLP, Denver, CO

Mary A. Throne, Cheyenne, WY

Todd Weaver, Davis Graham & Stubbs LLP, Denver, CO

Registration Information

Location and Lodging

The site of the conference is the Hyatt Regency Denver at the Convention Center, 650 15th St., Denver, CO 80202. The Section has reserved a block of rooms for this meeting with rates of \$209 single/double occupancy. The block of rooms will expire on October 20, 2009. Please reference the ABA Region 8 program when calling the hotel reservations line at (800) 233-1234.

Registration

We request that all registrations be made in advance online at www.abanet.org/environ/programs/reg8/2009/ or by completing the attached form and faxing it with your payment to (312) 988-5572 Attn: Program Registrar, c/o Key Enforcement and Regulation Developments in U.S. EPA Region 8. The deadline for receipt of all registrations is **October 30, 2009**. Should you miss the deadline and need to register onsite, please call (312) 988-5724 prior to the conference to insure that space is available.

Fee Information

Fee covers registration to the program, conference materials, continental breakfast, networking breaks, the luncheon, and reception.

Cancellation Policy

Registrants who are unable to attend the conference will receive a refund less a \$50 administrative fee if a written cancellation is received by **October 30, 2009**.

Cancellations may be faxed to (312) 988-5572, Attn.: Program Registrar c/o Key Enforcement and Regulation Developments in U.S. EPA Region 8. No refunds will be granted after **October 30, 2009**. Substitutions are acceptable. The ABA reserves the right to cancel any program and assumes no responsibility for personal expense.

Tuition Assistance

A limited number of registration fee waivers are available for government, public interest lawyers employed with nonprofits, academics, and law students. To apply, send an email outlining the basis for your fee waiver to Region 8 Planning Committee, Attn: Ninah Moore, c/o ABA Section of Environment, Energy, and Resources at MooreN@staff.abanet.org. All requests must be made by **October 23, 2009**.

Onsite Registration

Onsite registration will begin **November 5, 2009**, at 3:00 p.m. If you plan to register onsite, you must call (312)

988-5724 at least 72 hours before the conference to confirm that space is still available. Failure to call in advance may result in not being admitted to a sold out program. Onsite registrations will be accepted when accompanied by a check, money order, government purchase order, or government training form. Visa, MasterCard, and American Express are also accepted onsite. No registration will be accepted without payment.

Group Discounts

Law firms and other organizations registering multiple attendees (four or more) can be eligible for a group discount. All registrations must be received together and prior arrangements must be made with the Section Registrar by calling (312) 988-5724. Discounts will not be applied retroactively. You will not be able to register group attendees using the online registration system but rather must complete and submit hard copies of the registration form in this brochure. Discounted rates granted to speakers, planning committee members, sponsors, or tuition waiver candidates do not count towards group discount opportunities.

CLE Credit

CLE accreditation has been requested for this program from every state with mandatory continuing education requirements for lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE." Check with your state agency for confirmation of this program's approval. States with lawyer specialization programs have not been requested to certify this program. Certificates of attendance will be available in the registration materials at the program. Please note: New York licensed participants are required to sign-in and sign-out on a special attendance sheet at each session. The Section will not have the approved number of credit hours until the time of the program. If you would like information on specific state requirements, please visit the section Web site. To obtain information on the number of credits that have been applied for, please contact the Program Registrar at (312) 988-5724.

Special Needs

If any special arrangements are required for a disabled individual to attend this program, please contact the Section at (312) 988-5724.

Dietary Restrictions

If you have any dietary restrictions, please indicate so on the attached registration form so that your needs are noted.

